Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of Rural Call Completion	)	WC Docket No. 13-39
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COMMENTS OF
THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

Significant quantities of calls are not being completed to rural customers, and numerous calls to rural customers are of poor quality. Rate Counsel supports the FCC's proposed rules to resolve these persistent and pervasive problems, and Rate Counsel also recommends specific measures for strengthening the FCC's proposed rules. All consumers deserve access to a reliable telephone network. Livelihoods and safety depend upon network reliability. Data and reporting are essential to enable the FCC to detect call termination issues and discriminatory practices and to support enforcement of its prohibition on blocking, choking, reducing, or restricting telephone traffic.

Furthermore, until such time as distortions in intercarrier compensation markets are eliminated, timely enforcement by the FCC of call completion requirements is critically important to deter "bad actor" practices. Financial incentives now exist for long distance carriers to rely on least-cost routers, and yet the use of these intermediaries has created significant problems for rural consumers.

It is clearly in the public interest to prevent the degradation of calls that traverse the public switched network and to detect and remedy any deterioration in the quality of the nation's public switched telephone network. Moreover, consumers should not be required to await the completion of intercarrier compensation reform for relief from the unambiguous harm that they now endure.

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I. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel"), an agency representing New Jersey consumers,[1] files comments generally in support of the rules that the Federal Communications Commission ("FCC" or "Commission") proposes to address the persistent problems that are preventing rural customers from receiving calls,[2] with specific suggestions to strengthen them. The United States has a long tradition whereby customers, regardless of whether they live in urban, suburban, or rural areas, have an expectation that calls will be handled comparably and reliably, and where calling parties can have a reasonable expectation

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[1]/ Rate Counsel is an independent New Jersey State agency that represents and protects the interests of all utility consumers, including residential, business, commercial, and industrial entities.

[2]/ In the Matter of Rural Call Completion, WC Docket No. 13-39, *Notice of Proposed Rulemaking*, rel. February 7, 2013 ("NPRM"). Reply comments are due May 28, 2013. FCC Public Notice, DA 13-780, "Wireline Competition Bureau Announces Deadlines for Comments on Rural Call Completion Notice of Proposed Rulemaking, Invites Comment on List of Rural Operating Carrier Numbers," WC Docket No. 13-39, released April 18, 2013.

that, among other things, when they hear a ringing sound, the telephones of the parties they are calling are indeed ringing. However, the emergence of a new market segment within the long-distance calling market, namely "intermediate providers" (also known as "least cost routers"), has created a market distortion that is harming consumers who live in the nation's rural communities, and that, without much-needed regulatory intervention, will continue. Competitive pressures do not discipline the quality of calls that least cost routers handle and consumers bear the brunt of unacceptable service quality. As the FCC explained, "[s]ome of these intermediate providers offering wholesale call delivery services may be failing to deliver a significant number of calls to rural telephone company customers, and evidence indicates that the retail long-distance providers may not be adequately examining the resultant rural call completion performance."[3]

All consumers will benefit by the FCC remedying this egregious market flaw in a timely manner, whether rural consumers or those consumers seeking to communicate reliably with rural consumers. The FCC's prompt resolution will benefit society more broadly because, under the present circumstances, emergency services' ability to reach consumers reliably is in jeopardy. The market distortion exists because, presently, neither the originating long distance carrier nor the intermediate carrier bears sufficient (if any) economic consequence when calls fail to terminate reliably.[4] The consumers who bear the brunt of the harm, i.e., the "called" parties, cannot "vote with their feet" in the face of unreliable call delivery because they do not control the relevant "purchase" – that is, the selection of the originating carrier. Calling parties are also

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[3] / NPRM, at para. 1.

[4] / As is discussed below, particularly poor quality may lead to financial consequences when the FCC's Enforcement Bureau investigates problems. However, the continuing and widespread problems suggest that the possibility of the FCC's enforcement actions is not sufficient to deter carriers from sacrificing quality in order to maximize profits.

harmed by the status quo because they are unable to communicate with rural residents and businesses. Theoretically, the "calling" party, that is the party that originates calls that subsequently terminate in rural areas, could migrate to other long distance carriers if they are sufficiently dissatisfied with the way their calls to rural areas are handled, but the rural calls may represent an insignificant percentage of their overall calls, and furthermore the calling parties may lack the requisite information to assess the performance of their originating carriers' call delivery.

II. DISCUSSION

Consumer harms persist as a result of failed rural call completion.

Evidence suggests that the intermediate carriers used by retail long-distance providers to deliver long-distance calls to rural telephone company customers are failing to complete a "significant number" of those calls and that the retail long-distance providers have failed to examine the performance, or lack thereof, of the intermediate providers.[5] In order to provide long distance service to their customers, wireless providers, interexchange carriers, Voice over

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[5] / NPRM, at para. 1. The FCC explains the issue as follows:

> Call completion problems appear to occur particularly in rural areas served by rate-of-return carriers, where the costs that long-distance providers incur to complete calls are generally higher than in nonrural areas. To minimize call termination charges, long-distance providers often use intermediate providers that offer to deliver calls to specified terminating providers at comparatively low cost, usually within defined service quality parameters. Rural associations suggest that the call completion problems may arise from the manner in which originating providers set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers.

Id., at para. 6, cite omitted.

Internet Protocol ("VoIP") providers, local exchange carriers and cable companies often use intermediate providers who offer wholesale call delivery services.[6] The FCC is seeking comment on measures to improve Commission monitoring of performance, including reporting and data retention rules.[7]

According to the NPRM, consumers making long distance calls into rural areas often face problems, including: dead air, calling party ringing tones despite no rings on called party's end, false busy signals, problems on the line that inhibit conversation when the call goes through, and erroneous intercept messages.[8] These consequences pose safety issues and create economic hardships for rural residents.[9] The NPRM cites to ample evidence in the record that call-termination issues are both significant and pervasive.[10] Without timely and effective FCC action, these problems will persist.

Carriers' financial incentive to rely on intermediary providers will continue for another seven years and therefore timely resolution by the FCC is critically important.

Rate Counsel recognizes that the problem stems from differences in intercarrier compensation rates and that through a phase-out of intercarrier fees, the FCC's November 2011 *Universal Service/Intercarrier Compensation Transformation Order*[11] eventually will address

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6/ *See Id.*, at footnote 1, citing: "47 C.F.R. § 64.1600(f) (defining "intermediate provider" as "any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic"). Some intermediate providers are also referred to as "least cost routers."

7/ *Id.*, at para. 3.

8/ *Id.*, at para. 2.

9/ *See, e.g., id.*, at paras. 2, 4-6.

10/ *Id.*, at paras. 4-6.

11/ *In the Matter of Connect America Fund*, WC Docket No. 10-90; *A National Broadband Plan for Our Future*, GN Docket No. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135; *High-Cost Universal Service Support*, WC Docket No. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-

the market distortions that now exist. However, the incentive to avoid terminating charges will remain for many more years,[12] and, during this transition, consumers are unfairly bearing the burden of the distortions in intercarrier compensation markets. Terminating switched end office and reciprocal compensation rates will not be reduced to bill and keep until July 1, 2020 for rate-of-return carriers and for the competitive local exchange carriers that benchmark rates to those carriers.[13] Consumers should not be required to endure hardships relating to rural call termination during this transitional period. Instead, the FCC should move forward expeditiously to adopt effective rules[14] to offset the economic incentives that carriers now face to sidestep high terminating charges and should ramp up its enforcement bureau so that the rules have "teeth".

Rate Counsel supports the FCC's proposed rules because they will certainly improve the FCC's ability to monitor the quality of the delivery of long-distance calls to rural consumers and will allow the FCC to take adequate enforcement action to address providers' poor call completion practices. The proposed reporting and data retention requirements will allow the FCC to monitor call performance and "ensure a reasonable and nondiscriminatory level of service to rural areas."[15] Rate Counsel is concerned, however, by the seeming reliance by the FCC on *monitoring* call quality. Consumers need assurance that the FCC will impose sanctions as necessary.

45; *Lifeline and Link-Up*, WC Docket No. 03-109; *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, *Report and Order and Further Notice of Proposed Rulemaking* ("USF/ICC Trasformation Order").

12/ *Id.*, at paras. 739, 798-801.

13 / *Id.*, at Figure 9.

14/ Several groups provided evidence of the problem in an FCC workshop in October 2011, including National Exchange Carrier Association ("NECA"), National Telecommunications Cooperative Association, ("NTCA"), Organization for the Promotion and Advancement of Small Telecommunications Companies ("OPASTCO"), and Western Telecommunications Alliance.

15/ *Id.*, at para. 3.

There is no ambiguity about *how* providers should handle rural calls. The FCC's 2012 Declaratory Ruling made clear that providers must not block, choke, reduce or restrict telephone traffic.[16] The FCC currently conducts individual investigations of carriers and has developed "dedicated avenues for rural customers and carrier to inform the Commission about these call completion problems."[17] However, this case-by-case approach does not seem particularly well-suited for a problem that no one disputes is widespread. Furthermore, when the FCC does investigate individual carriers, the investigation is hampered by the lack of record keeping on the part of the carriers.[18] The proposed rules are, indeed, not a solution in search of a problem: quite the opposite. As noted by the FCC, these rules are proposed to specifically "help the Commission monitor originating providers' call-completion performance and ensure that telephone service to rural consumers is as reliable as service to the rest of the country."[19]

Rate Counsel supports the adoption of the proposed data retention and reporting rules as well as the prohibition of audible rings before the terminating carrier has indicated that the calling party is alerted to the call. A differential in service between rural and nonrural areas is not acceptable and these rules should apply to all carriers.[20] The FCC should move beyond monitoring the already know poor quality of calls and propose call communications quality standards. While the FCC recognizes that the quality is sometimes so poor that the call is "unsuccessful" the FCC declines to adopt quality standards at this time, but instead will "monitor

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[16]/ *Id.*, at para. 10.

[17]/ *Id.*, at para. 11.

[18]/ *Id.*, at paras. 13, 16.

[19]/ *Id.*, at para. 13.

[20]/ *See id.*

the problem." [21] Rate Counsel is perplexed by the FCC's proposal to defer the adoption of quality standards. Clearly the industry has failed to "self-police" – the FCC should take steps at this time to ensure consumers a guarantee of minimum baseline service quality.

Rate Counsel supports the FCC's proposed reporting requirements but recommends that they be more frequent.

Rate Counsel supports the specific reporting requirements outlined in the NPRM. Facilities-based originating long-distance providers should measure the call answer rate to each rural operating company number ("OCN") to which it terminates more than 100 calls during the month and also the overall call answer rate for nonrural call attempts. The FCC proposes quarterly reporting of monthly data.[22] Rate Counsel questions the wisdom of such infrequent reporting. Instead, the FCC should require carriers to submit three-months of data on a *monthly* basis through electronic submission. For example, the first three-month report could encompass data for January, February, and March; the second three-month report would include data for February, March and April (or alternatively could include cumulative monthly data for January through April).[23] The data should be submitted electronically and in a format that enables the FCC to analyze the data easily. With the capabilities of today's computer software and hardware, carriers should be able to collect and report data each month so that (1) the data is not as stale as it would be based on the FCC's proposed quarterly submissions; and (2) the lag between the FCC's detection of a problem and the FCC's attention to the problem is as short as feasible. The emphasis and goal of the rules should be to provide *timely* remedies to mitigate and to prevent consumer harm.

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[21]/ *Id.*, at 15.

[22]/ *Id.* at para. 20.

[23]/ After an initial "ramp-up" period, the FCC could require the electronic submission of twelve months of "rolling" data, i.e., data for the most recent twelve months for which data are available.

If any intermediate (i.e.., "least cost") providers are unable to comply with the rules that the FCC adopts in this proceeding, it may not be in the public interest for those providers to be responsible for handling traffic that traverses the public switched telephone network. Rate Counsel cannot conceive of a rationale for protecting an industry segment that would appear to offer no value to consumers. Rate Counsel acknowledges the compelling financial incentive for originating carriers to minimize their costs and their interest in relying on least cost routers, but this incentive should not be allowed to trump the nation's long-standing commitment to a reliable network. Only those carriers, whether originating, intermediate or terminating, that can reliably handle consumers' traffic and reliably comply with the FCC's rules should be allowed to operate elements of the nation's public switched telephone network.

Data at the individual rural telephone company level is indeed necessary to avoid the problem that average data masks pervasive problems at a more granular level.[24] Rate Counsel looks forward to reviewing providers' comments with respect to the data they already collect in the normal course of business.[25]

From an individual consumer perspective, it doesn't matter whether the failed calls to their local provider is a small percentage of the originating provider's total traffic.[26] Likewise, reliable service should be available at both peak and non-peak times. Unless there is already credible evidence that this is only a peak time issue, the data should include all times of day.[27]

[24]/ NPRM, at para. 20.

[25]/ *Id.*, at para. 23.

[26]/ *Id.*, at para. 21.

[27]/ *Id.*

Call attempt data should be public.

Carriers' call attempt data should be available to the public.[28] Markets only are efficient with information. Such publication may deter "bad actor" behavior and thereby reduce the problem. If a consumer in Newark can choose a long distance provider based on the provider's performance regarding call completion because of a desire to reach a sister in a rural area of the county, long distance providers may have an incentive not to use poor performing intermediate providers and practices. Rate Counsel is dismayed by the seeming industry presumption that has been surfacing in various proceedings that data somehow by "default" is proprietary.[29] Instead the default assumption should be that data are public so that public policy debate is open and so that consumers are informed adequately about relevant aspects of carriers' performance. Industry should bear the burden to demonstrate with compelling reasons why any particular category of data should be afforded confidential treatment, and industry should be required to provide specific evidence to support any assertions regarding any claims of confidentiality. Consumers are being required to wait seven years, until 2020, until the intercarrier compensation regime is overhauled and should not also be required to make their selection of carriers in an information vacuum.[30]

28/ NPRM, at para. 21.

29/ *See, e.g., Re: In the Matter of Connect America Fund High-Cost Universal Service Support-Model Design and Data Inputs for Phase II of the Connect America Fund, WC Docket Nos. 10-90 and 05-337, ex parte* filing by the National Association of State Utility Consumer Advocates, May 9, 2013 (regarding the Connect America Cost Model).

30/ The FCC states: "In particular, in comprehensively reforming intercarrier compensation, the Commission adopted a bill-and-keep methodology for all intercarrier traffic, and adopted a transition plan to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of rural telephone service." NPRM, at para. 37, cite omitted.

The FCC possesses the authority to impose rural call completion rules, and, moreover should classify VoIP as a telecommunications service.

The FCC discusses its authority to issue reporting, record keeping, and retention rules, and, in that context, states, among other things: "*To the extent* that these proposed rules would apply to VoIP providers, we propose to exercise our ancillary authority *to the extent that VoIP services are information services*, on the ground that such requirements would be necessary for the Commission to carry out its section 201(b) and 202(a) obligations with regard to carriers."[31] Rate Counsel concurs that the FCC possesses the requisite authority to issue rules, and raises two questions relating to the FCC's discussion of VoIP providers.

First, Rate Counsel does not understand the FCC's first use of the qualifying phrase "[t]o the extent that" because, in Rate Counsel's view, the proposed rules should apply to VoIP providers. VoIP has gained significant popularity among residential consumers, and those households that have migrated to this new platform (as well as future consumers who do so) should also be able to reach rural customers reliably. Between year-end 2008 and year-end 2011, the number of interconnected VoIP subscriptions in the United States grew 69% from over 21.7 million to 36.7 million.[32] The interconnected VoIP share of total residential end-user switched access lines and interconnected VoIP subscriptions grew from 20% in December 2008 to almost 37% in December 2011.[33] This trend likely will continue. Rate Counsel cannot conceive of any reason to carve out an exception for VoIP providers in the FCC's proposal rules regarding rural call completion.

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31 / NPRM, at para. 19, emphasis added. *See also, id.*, at para. 42.

32/ Federal Communications Commission, *Local Telephone Competition: Status as of December 31, 2011* ("FCC Local Competition Report"), rel. January 2013, at Table 3.

33/ *Id.*, at Chart 3.

Second, regarding the FCC's second use of the qualifying phrase "[t]o the extent that" Rate Counsel urges the FCC to eliminate the lingering uncertainty about the status of VoIP services: VoIP services are clearly telecommunications services and should be treated as such in this and all proceedings. The FCC should issue a prompt decision that classifies VoIP services as the telecommunications services that they truly are, and subject to the dual federal-state oversight that is afforded other voice services in the United States.

It is premature to establish a sunset date for the proposed rural call completion rules.

The FCC seeks comment on a sunset provision for its proposed rules.[34] It is premature to establish a sunset date. Instead, the FCC should monitor the data and carriers' performance to assess whether, as intercarrier compensation rates move toward their target levels, service quality problems decline. Based on actual experience, the FCC should then assess the merits of a sunset date.

Rate Counsel fully supports measures to improve signaling integrity.

In contrast with the "traditional" handling of voice calls, the introduction of least cost routers has compromised signaling integrity, a consequence borne by consumers as well as by the rural carriers that ultimately terminate calls and are erroneously considered by their customers to be the culprits in the mismanaged calls. The loss of signaling integrity is a clear example of how "competition" can go awry – in their pursuit of cost-savings, long-distance carriers rely on intermediaries who diminish the long-standing integrity of calling patterns and expectations.

Rate Counsel fully supports the FCC's measures to improve signaling integrity, including

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[34] / NPRM, at paras. 37-38.

steps, among others, to eliminate "false audible ringing" (where the calling party hears a ringing although the rural phone has not yet rung).[35]

Monitoring, record-keeping, and record retention are essential tools for effective regulatory oversight but need to be supplemented by timely enforcement measures.

Enhanced information will facilitate Enforcement Bureau investigations.[36] Although the proposed rules are essential, even if strengthened, they likely will be insufficient to overcome carriers' compelling interest in minimizing their cost of long distance call completion, which carriers achieve by tolerating intermediate carriers' poor service quality. Monitoring and information are critically important but are only valuable to the extent that they lead to expeditious enforcement where there is compelling evidence that carriers are blocking or degrading calls. Moreover, carrier compliance with the FCC's reporting, record-keeping, and retention is essential to support enforcement actions, yet precisely those carriers that degrade or fail to complete calls to rural customers are likely the ones least likely to maintain adequate information. Enforcement of the new proposed rules is essential to ensure that the FCC has the requisite information[37] to enforce the existing prohibition on blocking, choking, reducing, or restricting telephone traffic.[38] It is essential that carriers confront strong financial incentives to complete rural calls reliably. Therefore, Rate Counsel urges the FCC to ensure that its Enforcement Bureau possesses the requisite resources to follow up on carriers' non-compliance.

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35 / *Id.*, at para. 39. See generally, *id.*, at paras. 39-43. As the FCC explains: "This premature audible ringing departs from the long-established telephony signaling practice (and end-user expectation) of audible ringing indication being provided to the caller only after the terminating provider affirmatively signals that the called line is free and the called party is being alerted. The net effect of this practice is to unfairly make it appear to the caller that the terminating rural provider is responsible for the call failure, instead of the originating provider. Complaints filed with the Commission indicate that this misperception is often shared by the rural called party, who may eventually hear his phone ringing and answer after the calling party has finally hung up." *Id.*, at para. 40, cite omitted.

36 / *Id.*, at para. 16.

37 / *See id.* (explaining that a lack of information impedes the Enforcement Bureau).

38 / *Id.*, at para. 10.

Rate Counsel acknowledges that the FCC's Enforcement Bureau has investigated concerns with carriers' call completion practices. For example, on March 12, 2013, the FCC announced that Level 3 Communications, LLC ("Level 3") and the FCC's Enforcement Bureau ("Bureau") had entered into a consent decree that terminates the Bureau's investigation into Level 3's call completion practices in rural areas.[39] Level 3 will make a "voluntary" contribution to the U.S. Treasury of $975,000 and has committed to make an additional $1 million in contributions if it misses quarterly benchmarks set out in the consent decree. Level 3 will:

- "Complete long-distance calls to incumbent local exchange carriers in rural areas at a rate within 5% of that in non-rural areas over a two-year period.
- Report compliance with the 5% benchmark every quarter, beginning in January 2014.
- Pay an additional $1 million voluntary contribution if it misses the 5% benchmark in any quarter.
- Develop scorecards for intermediate providers that Level 3 uses to route calls, assessing, their performance in the areas of post-dial delay in connecting calls, network failure, and call completion rates.
- Identify problematic routes to intermediate providers monthly.
- Cease using poorly performing intermediate providers.
- Assist the Enforcement Bureau in other investigations by providing data concerning the performance of intermediate providers."[40]

Rate Counsel is hopeful that the enhanced monitoring and recordkeeping rules that the FCC proposed (and further strengthens based on Rate Counsel's and others' comments) will dovetail efficiently with the Enforcement Bureau's efforts. As a longer-term solution, as is discussed above, the comprehensive universal service and intercarrier compensation reform Order that was

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39/ FCC News Release, March 12, 2013. See, also, In the Matter of Level 3 Communications, LLC, File No. EB-12-IH-0087, Acct No. 201332080014, FRN 0017585993, Order, rel. March 12, 2013.

40/ *Id.*

adopted in November 2011 will phase out intercarrier fees over time and that reform should reduce the financial motivations to use "least-cost routers."

III. CONCLUSION

All consumers deserve access to a reliable telephone network. Livelihoods and safety depend upon it. Data and reporting are essential to detect call termination issues and discriminatory practices. Timely enforcement is critically important to deter "bad actor" practices. There is no public interest in protecting a segment of the market that contributes to the degradation of calls that traverse the public switched network and that contribute to deterioration in the quality of the nation's public switched telephone network. Consumers should not be required to await the completion of intercarrier compensation reform for relief from the unambiguous harm they now endure.

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